

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF PUERTO RICO

3 FISHER CONTROLS INTERNATIONAL,
4 LLC, formerly known as FISHER
5 CONTROL INTERNATIONAL, INC.

6 Plaintiff

7 Civil No. 07-1703 (SEC)

8 v.

9 CONECO DE PUERTO RICO, INC.

10 Defendant

11 **OPINION and ORDER**

12 Pending before the Court is Bettie Corrine Fulbright's ("Fulbright") Motion to Intervene (Docket
13 #35), and Defendant Coneco de Puerto Rico Inc.'s ("Coneco") opposition thereto (Docket # 37). For
14 the reasons explained below, Fulbright's Motion to Intervene is **DENIED**.

15 **Factual and Procedural Background**

16 On August 7, 2007, Plaintiff Fisher Controls International ("Fisher") filed suit for breach of
17 contract against Coneco.¹ Docket # 1. On August 8, 2008, Fulbright filed a motion requesting that this
18 Court allow her intervention in the present case. Docket #35 at 6. According to Fulbright, she is
19 Coneco's largest stockholder, with 41.05 % of Coneco's issued and outstanding stocks, followed by the
20 other two stockholders, Hector Iglesias and Angel Escalona (collectively "Controlling Stockholders")
21 which own 18.95 and 40 % respectively, and 58.95 % collectively. *Id.* at 1. Fulbright filed suit in the
22 Puerto Rico Superior Court, Carolina Section ("state court") under the Puerto Rico General Corporation
23 Act, P.R. Laws Ann. tit. 14, § 2601 *et seq*, against the Controlling Stockholders. Therein, she alleges
24 that the Controlling Stockholders are exercising illegal control over Coneco, and are denying her access

25

¹ On November 5, 2007, Fisher filed an amended complaint. Docket # 6. On December 10, 2007,
26 Coneco filed an answer to the initial complaint (Docket # 12), and the next day, filed an answer to the amended
complaint. Docket # 13.

1 CIVIL NO. 07-1703 (SEC)

Page 2

2 to information about Coneco's corporate affairs, business dealings, accounting, and transactions made
3 by the Controlling Stockholders. Id. at 2. Fulbright further contends that the Controlling Stockholders
4 have not provided her information about the status of the instant case, the upcoming trial, and any
5 settlement negotiations. Id. Based on the foregoing, she seeks injunctive relief in parallel proceedings.
6 Id.

7 In her motion to intervene in the present case, Fulbright seeks immediate and simultaneous
8 access to all information related to the proceedings before this Court. According to Fulbright, her
9 intervention will benefit Coneco insofar as any ruling by this Court will bear all stockholders's
10 approval, thus, avoiding future litigation among shareholders. In support of her request, Fulbright posits
11 that (1) she has a proprietary interest in the outcome of this case, specifically, as to any ruling affecting
12 Fisher, (2) her interests are not being adequately represented, because the Controlling Stockholders have
13 denied her access to information about the status of the instant case, and (3) that the Controlling
14 Stockholders are illegally exercising control over Coneco. Id. at ¶¶ 4,12 & 16.

15 In opposition, Coneco argues that Fulbright is not a party to the agreement between Coneco and
16 Fisher, therefore, she has no proprietary interest in the present case. Docket # 37. They further allege
17 that her rights as a stockholder are before the local courts, as such, they are duly protected. Moreover,
18 Coneco avers that her counsel can access, through the PACER Internet docket system, all information
19 pertaining to the instant suit. They also note that the other stockholders are neither parties nor
20 intervenor's in this case. Docket #37. Finally, Coneco contends that Fulbright's intervention at this stage
21 of the proceedings would unduly delay the case.

22 Therefore, the issue pending before this Court is whether Fulbright has a right to intervene in
23 this action pursuant to FED. R. CIV. P. 24.

24 **Standard of Review**

25 As to intervention of right, Rule 24(a) provides that:

26

3 [o]n timely motion, the court must permit anyone to intervene who: (1) is given an
4 unconditional right to intervene by a federal statute; or (2) claims an interest relating to
5 the property or transaction that is the subject of the action, and is so situated that
6 disposing of the action may as a practical matter impair or impede the movant's ability
7 to protect its interest, unless existing parties adequately represent that interest.

8 The First Circuit has held that, under Rule 24(a)(2), a “putative intervenor must show that (1)
9 it timely moved to intervene; (2) it has an interest relating to the property or transaction that forms the
10 basis of the ongoing suit; (3) the disposition of the action threatens to create a practical impediment to
11 its ability to protect[] its interest; and (4) no existing party adequately represents its interests.” Costa
12 v. Marotta, Gund, Budd, & Dzera, LLC, 281 Fed. Appx. 5, 7 (1st Cir. 2008) (citing B.Fernandez &
13 Hnos., Inc. v. Kellogg USA, Inc., 440 F.3d 541, 544-45 (1st Cir. 2006)); Nextel Communications of
14 Mid-Atlantic, Inc. v. Town of Hanson, 311 F. Supp.2d 142, 150 (1st Cir. 2004). In order to prevail, the
15 moving party must meet all four criteria, that is, timeliness, sufficiency of interest, likelihood of
16 impairment, and inadequacy of representation. Costa, 281 Fed. Appx. at 7. When analyzing a Rule
17 24(a)(2) motion, courts must apply a “holistic, rather than a reductionist, approach,” and keep in mind
18 “a commonsense view of the overall litigation.” Public Serv. Co. of New Hampshire v. Patch, 136 F.3d
19 197, 204 (1st Cir. 1998). Since the particular facts of the case are essential to determine an intervenor’s
20 rights, “the very nature of a Rule 24(a)(2) inquiry limits the utility of comparisons between and among
21 published opinions.” Id.

22 **Applicable Law and Analysis**

23 Upon reviewing the record, this Court finds that there is no controversy as to Fulbright’s
24 compliance with the timeliness requirement. See Kellogg USA, 440 F.3d at 545. Therefore, this Court
25 moves to consider the second prong of Rule 24(a)(2)’s standard, that is, whether Fulbright has “an
26 interest relating to the property or transaction which is the subject of the action.” Id. The First Circuit
stated that “no bright line of demarcation exists ..., in defining the nature of the ‘interest’ required by
Rule 24 to warrant a party’s intervention.” Langone, 231 F.R.D. at 118. Although “the type of interest

3 sufficient to sustain intervention as of right is not amenable to precise and authoritative definition, a
4 putative intervenor must show at a bare minimum that it has ‘a significantly protectable interest.’”
5 Patch, 136 F.3d at 205 (citing Donaldson v. United States, 400 U.S. 517, 531 (1971)). Moreover, “the
6 intervenor’s claims must bear a sufficiently close relationship to the dispute between the original
7 litigants.” Langone. Flint Ink N. Am. Corp., 231 F.R.D. 114, 118 (D. Mass. 2005). Also, “[t]he interest
8 must be direct, not contingent[, and] the determination of whether an interest is sufficient for Rule
9 24(a)(2) purposes is colored to some extent by the third factor—whether disposition of the action may,
10 as a practical matter, impair or impede the applicant’s ability to protect its interest.” Id. This requirement
11 is interpreted broadly. See Daggett v. Comm’n on Gov’t Ethics and Election Practices, 172 F.3d 104,
12 110 (1st Cir. 1999).

13 Fulbright contends that she has a proprietary interest in this case, because as a Coneco
14 stockholder, the company’s assets may be affected by the outcome of the case. Docket # 35 at ¶12. In
15 opposition, Coneco avers that Fulbright lacks said proprietary interest since she is not a party to the
16 contract in controversy, or to the business negotiations between Fisher and Coneco. Docket # 37.

17 Upon reviewing the record, this Court notes that the controversy between Fisher and Coneco
18 is exclusively as to Coneco’s alleged breach of contract. See Docket # 6. Specifically, in the complaint,
19 Fisher argues that Coneco failed to abide by the terms of the last signed agreement between them. Id.
20 at ¶ 2. Moreover, Fisher contends that Coneco failed to fulfill essential obligations to their business
21 relationship. Id. at ¶ 2. In order to end their business relationship with Coneco, without incurring in
22 liability, Fisher moves for a declaratory judgment as to the applicability of several state laws. Id. at p.
23 18. Fisher also requests that this Court order Coneco (1) to cease and desist from representing,
24 advertising, or promoting itself, in any and all mediums of communications, as an Emerson brand
25 distributor and/or representative, or conducting business as such; and (2) return to Fisher all documents
26

1 CIVIL NO. 07-1703 (SEC)

2 Page 5

3 pertaining to Emerson.² Docket # 6 at ¶¶ 50, 56 & 59. Fulbright, and the other stockholders, are not
 4 parties to the agreements between Fisher and Coneco, therefore, her alleged interest is, at best,
 5 contingent on this Court's decision. Mastercard Int'l, Inc. v. Visa Int'l Serv. Ass'n, 471 F.3d 377, 390
 6 (2nd Cir. 2006) (denying putative intervenor's request because he was not a party to the contractual
 7 dispute from which the federal suit arose); Bayshore Ford Trucks Sales, Inc. v. Ford Motor Co., 471
 8 F.3d 1233, 1247 (11th Cir. 2006). Although the interest requirement is interpreted broadly, in order to
 9 satisfy the second element of the Rule 24(a)(2) standard, an intervenor's interest has to be direct, and
 10 Fulbright's request for intervention fails as to this issue. The fact that the putative intervenor may suffer
 11 "practical harm [that may result from disposition of the main action] is irrelevant in the absence of some
 12 interest in the main action." Mothersill D.I.S.C. v. Petroleos Mexicanos, S.A., 831 F.2d 59, 63 (5th Cir.
 13 1987). Moreover, the disposition of the instant case will not impair or impede Fulbright's ability to
 14 protect her interests insofar as they will be adequately protected through the state courts.

15 Therefore, this Court concludes that Fulbright's reasons to intervene, that is, the alleged
 16 protection of her assets, is not directly related to this suit. Fulbright has not established that she has a
 17 direct interest in this litigation pursuant to Rule 24(a)(2), and, as a result, intervention as of right is
 18 unwarranted. Considering the above, this Court need not address the second and third prongs of the
 19 Rule 24(a)(2) standard. See Walgreen Co. v. de Melecio, 194 F.R.D. 23, 25 (D.P.R. 2000) (finding that
 20 "[a]n applicant for intervention as of right must run the table and fulfill all four of these preconditions.
 21 The failure to satisfy any one of them dooms intervention.")

22 Based on the foregoing, Fulbright's motion to intervene (Docket #35) is **DENIED**.

23
 24 **IT IS SO ORDERED.**

25
 26 ² In 1992, Fisher became part of the Emerson Process Management Group, a "global supplier of
 27 products, services, and solutions that measure, analyze, control, automate, and improve process-related
 28 operations in the chemical, oil and gas, pulp and paper, food and beverage, pharmaceutical and other industries."
 29 Docket # 6 at ¶ 10.

1 CIVIL NO. 07-1703 (SEC)

2 Page 6

3 San Juan, Puerto Rico, this 20th day of March, 2009.

4 *S/*Salvador E. Casellas
5 Salvador E. Casellas
U.S. District Judge